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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

WALTER L. WAGNER, an individual,	:	
Plaintiff,	:	Case No. 2:11-cv-00784-BCW
v.	:	DEFENDANT WORLD
	:	BOTANICAL GARDENS, INC.'S
PRESTON MICHIE, an individual, KENNETH	:	MOTION TO DISMISS.
FRANCIK, an individual, LESLIE COBOS, an	:	
individual, MARK ROBINSON, an individual,	:	
ANNETE EMERSON, an individual, STEVE	:	
BRYANT, an individual, and WORLD	:	
BOTANICAL GARDENS, INC., a Nevada	:	Magistrate Brooke C. Wells
corporation,	:	
Defendants.	:	

Defendant World Botanical Gardens, Inc, a Nevada corporation ("Defendant WBGI"), by and through its attorneys of record Arnold Richer and Patrick F. Holden of RICHER & OVERHOLT, P.C., and pursuant to the *Federal Rules of Civil Procedure* (hereinafter "Rule" or "Rules") 12(b)(1), 12(b)(6) and DUCivR 7-1, submits Defendants World Botanical Gardens,

Inc.'s Motion to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(1) and (6).

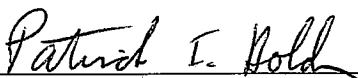
Defendant World Botanical Gardens, Inc. ("Defendant WBGI") moves to dismiss Plaintiff's First Amended Complaint for Damages and Injunctive Relief (the "Complaint") on the basis that Plaintiff Walter L. Wagner's ("Plaintiff") claims are barred under the doctrine of issue preclusion, that Plaintiff lacks standing and that jurisdiction lies solely with the Nevada state court.

Plaintiff's state-law defamation claims are barred by three prior state court decisions resolving the factual predicates of all of Plaintiff's defamation claims. In addition, Plaintiff is not a shareholder of Defendant WBGI, and therefore lacks standing to bring a waste, fraud and mismanagement claim against Defendant WBGI. Finally, under Nevada law, any such claim against Defendant WBGI must be brought in Nevada state court.

Defendant World Botanical Gardens, Inc.'s Motion to Dismiss is accompanied by Defendant World Botanical Gardens, Inc.'s Memorandum in Support of Motion to Dismiss submitted concurrently herewith.

DATED this 7th day of November, 2011.

RICHER & OVERHOLT, P.C.



Arnold Richer

Patrick F. Holden

Attorneys for Defendant World Botanical Gardens, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **DEFENDANT**
WORLD BOTANICAL GARDENS, INC.'S MOTION TO DISMISS to be delivered to the
following in the manner and on the date below indicated:

- ☐ Mail
☐ Fax
☒ Email
☐ Hand Delivery

Walter L. Wagner
532 N 700 E
Payson, Utah 84651
retlawdad@hotmail.com
(Pro Se Plaintiff)

DATED this 7th day of November, 2011.



- ☒ Mail
☐ Fax
☐ Email
☐ Hand Delivery

Walter L. Wagner
532 N 700 E
Payson, Utah 84651
retlawdad@hotmail.com
(Pro Se Plaintiff)

DATED this 8th day of November, 2011.

